

1G11-S91401, P.0f
①

LEGAL ENGLISH - HELEN MOTRO
MOED A - FINAL EXAM 2007
EXAMPLES OF ANSWERS

1. What is the purpose of the Act? 3 points

① Based on the opening sentence of the act,
③ its purpose is to create a deterrence for
individuals who misbehave at, or related to, football
matches.

1 The Football (Offences) Act 1991(c.1a) ("the Act"),
as stated in its preamble was enacted in order
to make provision regarding football hooliganism
and connected issues.

(2)

2. Is this a criminal or a civil law? Support your answer. 3 points

③ This is a criminal law. Sections 2, 3 and 4 begin with the words "it is an offence for a person...", thus declaring that the performance of the prohibited conduct constitutes a criminal offence. Furthermore, section 5(2) states that a person guilty of an offence under this act is liable on summary conviction to a fine.

3. Summarize what types of conduct are prohibited by the Act. 3 points

③ The types of conduct prohibited by the act are as follows: ① throwing things (section 2); ② racialist chanting (section 3); and ③ ~~Entering~~ Entering areas where admittance is not allowed (section 4).

(3)

4. During a football match held between two private boys' high schools in London, one Jewish and one Catholic, groups of supporters from both sides began chanting insults about the other group's religion. Does the Act apply? 3 points

4) ~~The Act~~ (3) does not apply to the match held between the two private high schools because it is not a "designated football match" in accordance with Section 1(1) of the Act. It is not an association football match designated for the purposes of the Act by order of the Secretary of State.

5. Sections 2 and 4 of the Act include the language "which shall be for him to prove". In your opinion, why does the Act explicitly include this phrase? 3 points

5) ~~I think that this phrase, which mean a burden of proof, is the exception and not the rule to the usual rule, and this is why the Act~~ (3) ^{in a criminal rule} explicitly includes it.

(4)

Another answer for Q5:

③ The act includes the phrase "which shall be for him to prove" to emphasis in order to make clear that the burden of prove of anyone claims other wise is on that person. Usually the burden of prove is on the plaintiff, and here the Act moves it to the defendant.

6. Fans from Bristol, England travel to Edinburgh, Scotland to watch their football team play the finals of the Tournament Cup championship match. During the game the English fans start to chant: "Scots are dirty beasts". Can they be charged under the Act? Why? 3 points

6) The fans cannot be charged under the Act because it only extends to England and Wales. ~~The game is held~~

~~Scotland~~ This is according to Section 6(3) of the Act.

The game in question was held in Scotland which is not in the extent of the Act.

(5)

7. Immediately after the final whistle ending a match between Liverpool and Portsmouth City in Liverpool a drunken spectator throws empty beer bottles, aiming at the field. They fall short, landing in the stadium. Under what provisions of the Act does his conduct fall? 3 points

(3)

D-7. The conduct of the drunken spectator fall under

the following provision of the Act: section 1(2)(g) →

"... and ending one hour after the end of the match".

The spectator threw the bottles immediately after
the final whistle. A match was in Liverpool, England

(section 6(3)). The spectator threw bottles towards

the playing area (section 2(g)). Even if he had

thrown the bottles at the stadium area where they

in fact landed, he would have been violating

section 2(b) of the Act.

(p. 6)

8. The spectator in Question 7 is charged with violating the Act. As a defense, he argues that the bottles did not break, that they were immediately cleared away by maintenance staff, that they caused no injury to players or public and no damage to property. Should the court accept his arguments? 3 points

Q-8: (3) To constitute a violation of the Act section

2 does not require that there be an injury to

to the players or public caused by the disorderly behavior

or even damage to property. The mere act of throwing

things at or towards the players or the spectators

is sufficient for the violation of the Act. Although

section 2 allows the person accused of the violation

to show lawful excuse for his actions, it seems

that in this case no such justification existed.

Therefore, the court should not accept the spectator's

arguments.

(P. 7)

9. What is the punishment for violating this act? 3 points

Question 3 According to Section 5~~s~~, subsection(2) the punishment for violating this act is a fine not exceeding level ~~as~~ three on the standard scale.

continued →

10. Discuss the scope and purpose of football banning orders and the possible human rights issues they raise. **26 points**

(2 MODEL ANSWERS INCLUDED)

Recent developments in England's statutory law
pertinent to the prevention of "Football hooliganism"
have raised a number of possible human rights issues.
According to Ian Blackshaws review of the above developments
in Football hooliganism and human rights, 151 NEW L.J. 1562
(2001), England has incorporated the European Convention
on Human Rights (ECHR) into its domestic law. It is
only logical that following the enactment of the
Human Rights Act 1998 in England one would
expect a stricter scrutiny on the part of English
courts towards statutory law bearing on individual
human rights.

In reality, however, just the opposite occurred.
Although the ^{initial} purpose of the "Football hooliganism" laws
was prevention of future attendance of football matches
in England and Wales by persons formerly convicted

(p9)

Crowd disorder"; Mark James & George Pearson, Football

Banning Orders: Analyzing Their Use in Court, To Jack

503 (2006), resulted in the broadening of the scope of such statutes to include suspected hooligans who ~~haven't~~ have not previously been convicted of football related offences. Such an expansion contravenes the presumption of innocence of the suspect, thus failing to meet the "the right to a fair trial" principle established in section 6 of England's Human rights Act (the "Act")

Moreover, in tracking such "suspected hooligans" the authorities gather information on such persons thereby causing for possible infringement of their right to privacy as guaranteed by section 8 of the Act.

The Football Banning Orders (FBOs) which were

q.10

football related offenders within the boundaries of England, were later used as a tool for preventing such persons from leaving the UK when English teams were playing abroad.

Such FBO's allowed the police to force the possible suspects related to football disorders to surrender their passports ~~to~~ in an attempt to prevent their leaving the country. Such restrictions may be deemed to be unreasonable, thereby contradicting a person's basic right to go where and when he chooses.

The definition of "football related" has been extended ~~to~~ leading to even more detentions of the so-called hooligans, since the police could impose the orders even when the conviction of a person was not 'football' related, or when they

(p. 11)

in relation to a football match.

~~reflection of its character~~

It is difficult to see how such sweeping detentions may be regarded as "reasonably necessary to prevent" the commission of an offence. Therefore, such actions may also be ~~be~~ depriving a person of his right to liberty and security (section 5 of the Act).

In sum, although maintaining public order and protection of individual property are legitimate purposes to be pursued by the authorities, the legal measures for accomplishing these rationales ~~should~~ should be adjusted to the basic principles of human rights, especially when applied in a democratic country.

MODEL ANSWER #2
for Q.10

(P.12)

in England

10. 25 The growing phenomenon of "football hooliganism" brought

1

forth the state's need to take legislative action and measures in order

to detain this problem. New Acts were legislated which outlawed

activities of misconduct (racial chanting, invading pitch, etc.) as well

as activities that might induce misconduct (consumption of alcohol in

stadiums).

One of the major new tools introduced by the new legislation

was the Football Banning Order (FBO), a civil order, whose violation is

a criminal offence. Its purpose was to prohibit the attendance of

previously convicted spectators (in football-related offences) in hope of

diminishing the occurrences of misconduct. While this tool seems quite

reasonable, it is the extended conditions that followed which began

to raise issues of human rights.

These aforementioned extensions include the power to prevent

international travel of previously convicted "football offenders" during time

or names abroad including the power to order the offender to surren-

p.13

MR. JUSTICE

his passport during away games abroad. Furthermore, the extension allows an FBC to be issued to an individual who is suspected of hooliganism in the future, regardless of whether or not he had been convicted in the past.

In light of the Human Rights Act, which incorporated the European Convention on Human Rights (ECHR), questions arise regarding the possible breach of human rights by these extensions. Article 5 of ECHR, for example, secures one's right to "liberty and security". It is possible that the ban of an individual, especially the restriction of his ability to leave the country, from attending a football match, solely based on the possibility that he will commit an act in the future ~~is~~ ~~does~~ not justifiable. Moreover, taking penal measures against someone who has yet to commit the offence, breaches his right to fair trial as guaranteed by Article 6 of ECHR. It can also be contended that the grave amount of information gathered and held by the intelligence service is too invasive and violates Article 8 which ensures one's right to privacy.

(P. 14)

Section
10 contd.

To conclude, though the prevention of football hooliganism

is important, the State should take caution not to put public

order too much ahead of human rights and strive to find the

balance to ensure both. Excellent - but give references to articles upon which you base your info

11. What was the decision of the trial court in this case? 3 points

(3)

Question 11. The decision of the trial court was that the chanting o

the defendant during the football match ~~detracted from~~ was not "of a racial

nature" as defined by Section 3(2)(b) of the Football (Offences) Act 1991, a

Therefore the defendant was acquitted.

12. What are the elements of Sections 3(1) of the Act? 3 points

(4)

12) Section's 3(1) elements are: taking part at a

designated football match, while chanting indecent or

racialist natured chants.

(P.15)

13. Who was Goldring J? 3 points

13) (3) Mr Justice Goldring ~~was~~ one of the judges in this case. He did not deliver the opinion of the court, but concurred.

14. Who was Edward Coke? 3 points

14) (3) Edward Coke was the prosecutor in the case.

15. What was the issue before the court? 3 points

15) (3) The issue before the court is whether or not the evidence produced by the prosecution ~~not~~ proved that the defendant violated Section 3(1) by taking part in chanting of a "racialist nature" as defined by Section 3(2)(b) of the Act.

In other words, was the district judge entitled to find that the chanting described by the evidence was not of a "racialist nature".

(p.16)

16. Summarize the facts of the case. 3 points
(2 model answers)

⑥ @ In a nationwide football league match, ~~an amateur~~, which was one of the spectators, started, along with other spectators, to chant the phrase 'You're just a town full of P...'.
⑦ The chant was audible to the supporters of the opposing team.

⑧ There was no Pakistani, Asian or black persons in the crowd or field.

⑨ The defendant agreed that he used the phrase in a police interview.

⑩ Ratcliffe was a spectator ~~at~~ at a football game. During the game

(3) he engaged in a chant directed at the fans of the opposing team

that stated: "you're just a town full of Pakis". Ratcliffe was arrested

and charged with violating S.3(1) of the Football (Offences) Act 1991.

17. What was the court's decision and order? 3 points

17) The court decided that using the word "Pakis" in this context is of a racialist nature. He remitted the case to the district judge, and ordered him to convict the defendant.

(p.17)

18. Discuss and explain the reasoning of the court in reaching its decision. 26 points
2 model answers included

(18) The court's decision in Director of Public Prosecution v. Stoke [hereinafter "Stoke"] (24) Excellent - except missing conclusion

v. Stoke [hereinafter "Stoke"] clearly stated that the legal system will not tolerate, under ~~any~~ any circumstances, a racist behavior in football matches. The court stated several reasons and explanations for his decision to see the phrase 'you're just a town full of Pakis' [hereinafter "The Phrase"] as one of a racist nature according to the Football (Offences) Act, 1991 [hereinafter "The Act"]

First, the court deals with the literal meaning of the word "Paki". According to the Oxford English Dictionary, there is no doubt that it ~~has~~ possesses racial meaning and that it is "racially offensive". This is a technical point of view on the situation, but it helps to understand the objective meaning of ~~this~~ ~~word~~ The Phrase.

Second, the court indicated three different cases in which courts found ~~that~~ phrases that included ~~the~~ The Phrase were of a racialist nature.

(p.18)

Phrases such as "what are you doing standing up for a Paki"
[R. v. Reader [2002] Cr. App. R. (S) 442], "Paki bastard" [R. v. Webb

[2001] 1 Cr. App. R. (S) 112], "Fucking Paki" and "Paki ~~wanker~~ wanker"

[R. v. Salihu (unreported)] were all recognized ~~as~~ and defined
as racial offends of a racialist nature. The court ~~finds~~ do not
find any difference between those phrases. The phrase.

Third, the court in Stoke approves with the Barristers
claims, that the phrase was intended to ~~assault~~ insult the fans
by indicating that they are "inferior because of their nationality
or ethnic or national origin" (Stoke), that the context indicates that
the Pakistani origin is inferior, that ~~Pakistanis~~ The phrase is
not similar to "Brit", "Kiwi" and others due to their historical
context.

Forth, the court emphasized that there is no relevance
to whether there were Asian, black or Pakistani people at that
time, the relevant question is the fan's intent, and there is no doubt that it
was racial.

CONCLUSION?

(p.19)

Q. 18 -

2nd model answer

Q-18 (25) ^{name what care} ~~the court decided that Ratcliffe's~~

conduct was within the scope of the Act,

since it constituted a chanting of a socialist

nature at a designated football match. The

Court deemed it immaterial that Ratcliffe's

continued →

words did not insult anyone^(p20), since the Act's purpose was, as the court went on to say, discouraging racially insulting conduct, regardless of its effect.

Moreover, the word "Paki;" was intended to imply Wadham's inferiority because of a number of its Pakistani citizens. As such, it was not used as merely the shortened version of "Pakistani," just like "Aussie" or "Brit", etc.

Courts have already addressed the nature of this word in previous instances, holding that such a word constituted an aggravating factor in those cases, thus recognizing the racist nature of this word. R. v Reader [2002] Cr. App.

R.(S) 442, R. v. Webb [2001] 1 Cr. App. R. (S) 112; ~~etc~~

R. v. Salihi, (unreported).

(p. 21)

itself within the modern understanding of
~~COURTED DICTIONARY~~
word. The Court also expressed its sorrow
in view of the insulting connotation this word
as established in the society.

Although the court admitted that the nature
of the word "Paki," must be examined on a
case by case basis, depending on its context,
here, it undoubtedly was used in an insulting
sense. The court inferred this from the word
"Just" added to "Paki."

For all the foregoing reasons, the court
found ample evidence of the racist nature
of Ratcliffe's phrases, and therefore directed
the lower court to convict him with
violation of the Act.

19. **Optional** bonus question for up to 3 points extra credit.
What tools do judges and lawyers use to help interpret statutory language?

2 model answers included

(3) Judges and lawyers use various tools to help interpret

statutory language. These tools include the statutes historical

context, the title of the statute, other courts interpretations

of the statute (courts from the same jurisdiction or different jurisdictions)

In addition they may use interpretations of similar statutes.

They may rely on expert ~~op~~ opinions of legal scholars

~~available~~ as manifested in Law Review Articles. ~~or~~ Reports

Most importantly, they rely on the rules of interpretation of

their own jurisdiction and legal system.

(P.23)

Q-19. (3) 2nd model answer to Q 19

Lawyers and judges use the following tools to help interpret statutory language: ① the wording of the specific section, its title if any; ② the statutory context: the statute in its entirety, other sections, title of the statute, preamble; ③ historical context: the events that led to the enactment of the statute; ④ legislative history: public records containing information reflecting legislature's intent; ⑤ the interpretations of higher, collateral, and lower courts within the same jurisdiction or the same state or other states on a similar subject matter; ⑥ interpretations of other jurisdictions or comparative legal systems of similar states; ⑦ interpretations of legal scholars who are



(p.4)

experts in the said field, (D) interpretations
of administrative agencies responsible for
enforcing the said statute, (D) widely
adopted principles of interpretation, for
instance, the statute shall be construed in
the context of the harm the legis later
intended to remedy, (D) public policy,
considerations of effectiveness, "purposive
interpretation theory" (Justice Aharon Barak), and
etc.

- END -